

## CUSTODY AND CONTROL AGREEMENT

**THIS CUSTODY AND CONTROL AGREEMENT** (the “Agreement”) is effective as of \_\_\_\_\_, 2011, among \_\_\_\_\_ (“Pledgor”), **THE BANK OF NEW YORK MELLON**, as custodian (“Custodian”), and **INDIANA BOARD FOR DEPOSITORIES** (“Secured Party”).

WHEREAS, pursuant to the Pledge Agreement (Securing Deposit of Public Funds) dated \_\_\_\_\_, 2011, as amended from time to time, between the Pledgor and the Secured Party (the “Pledge Agreement”), the Pledgor pledged certain assets to the Secured Party and granted a security interest in the assets to the Secured Party, to secure the Pledgor’s obligations to the Secured Party under the Pledge Agreement; and

WHEREAS, the Pledgor, the Custodian and the Secured Party are entering into this Agreement to provide for the control and the safekeeping, among other services, of the assets of the Account (as defined below) to permit the Secured Party to perfect its security interest therein.

THEREFORE, intending to be legally bound, the parties hereby agree as follows:

**1. The Account.** The Pledgor and the Secured Party hereby appoint The Bank of New York Mellon as the custodian of the property pledged by the Pledgor to the Secured Party, and the Custodian hereby accepts such appointment and agrees to establish an account in the name of the Pledgor for the benefit of the Secured Party (the “Account”). The Custodian shall have no responsibility under this Agreement for any assets until such assets are actually received by the Custodian, its agents or its subcustodians. All parties agree that the Account and all property held by the Custodian in the Account will be treated as “investment property” under Article 9 of the Uniform Commercial Code of the State of Indiana (the “UCC”) and “financial assets” under Article 8 of the UCC.

**2. Authorized Parties.** The Secured Party shall furnish the Custodian with a written list of the names, signatures and specific extent of authority of all persons authorized to direct the Custodian on its behalf under the terms of this Agreement. The Custodian shall be entitled to rely upon the authority of any person or entity properly designated by the Secured Party (the “Secured Party’s Authorized Party”) to the Custodian until the Custodian is notified otherwise in writing. The Secured Party shall also furnish the Custodian with a written list of the names, signatures and specific extent of authority of all persons at Pledgor authorized to direct the Custodian under the terms of this Agreement. The Custodian shall be entitled to rely upon the authority of any person or entity at Pledgor properly designated by the Secured Party (the “Pledgor’s

Authorized Party”) to the Custodian until the Custodian is notified otherwise in writing. Custodian acknowledges that the foregoing lists contain authorized parties whose authority may be expressly limited to the delivery of securities only.

**3. Authorized Instructions.** “Authorized Instructions” shall mean all directions to the Custodian from the Secured Party’s Authorized Party or the Pledgor’s Authorized Party, as applicable, pursuant to the terms of this Agreement and consistent with the express authority of the Secured Party’s Authorized Party or the Pledgor’s Authorized Party, as applicable. Authorized Instructions shall be in writing, transmitted by first class mail, overnight delivery, private courier, facsimile, electronic transmission subject to the Custodian’s policies and procedures, any other institutional delivery system or trade matching utility as directed by Secured Party’s Authorized Party or the Pledgor’s Authorized Party, as applicable, and supported by the Custodian, or any other method agreed upon in writing by the parties. A Notice of Exclusive Control (as defined below) sent by the Secured Party shall be an Authorized Instruction. The Custodian may, in its discretion, accept oral directions as Authorized Instructions from Secured Party’s Authorized Party or the Pledgor’s Authorized Party, as applicable, and may require confirmation in writing. However, where the Custodian acts on an oral direction as Authorized Instructions prior to receipt of a written confirmation, the Custodian shall not be liable if a subsequent written confirmation fails to conform to the oral direction. The Custodian shall be fully protected in acting in accordance with all such Authorized Instructions and in failing to act in the absence thereof.

**4. Priority of Lien.** Custodian hereby acknowledges the security interest granted to Secured Party by Pledgor. Custodian subordinates in favor of Secured Party any interest, lien or right of setoff it may have against the Account except for payment of its customary fees and charges pursuant to this Agreement. The Custodian will not comply with entitlement orders concerning the Account originated by any third party without the prior written consent of Secured Party.

**5. Control.** The Custodian shall comply solely with Authorized Instructions and entitlement orders including, but not limited to, any written notice stating that the Secured Party is exercising exclusive control over the Account (a “Notice of Exclusive Control”) (which Notice of Exclusive Control shall be considered an entitlement order as defined in UCC Section 8-102(a)(8)), concerning the Account originated by the Secured Party without further consent by the Pledgor or any other person. Unless and until a Notice of Exclusive Control is sent by the Secured Party, the Custodian may proceed as specifically permitted by Section 6. The Custodian shall have no responsibility to ensure that the market value of the assets in the Account is equal to or exceeds the amount that the Pledgor is required to maintain pursuant to the Pledge Agreement. The Secured Party hereby grants authority to the Custodian to deposit in the Account any money, securities and other property received by the Custodian from the Pledgor to be deposited into the Account. The Pledgor hereby grants authority to and directs the Custodian to deposit in

the Account any money, securities and other property delivered to Custodian by the Pledgor.

**6. Directed Powers of the Custodian.** If a Notice of Exclusive Control has not been sent by the Secured Party, the Custodian shall take the following actions in the administration of the Account pursuant to Authorized Instructions:

(a) Settle purchases and sales and engage in other transactions, including free receipts and deliveries, exchanges and other voluntary corporate actions, with respect to securities or other property received by the Custodian; and

(b) Submit master ballots in accordance with Authorized Instructions in bankruptcy matters in cases where the Pledgor's Authorized Party is unable to submit or cause the Custodian to submit an individual ballot with respect to the Account.

**7. Discretionary Powers of the Custodian.** The Custodian shall have the discretionary authority, without the necessity of receiving Authorized Instructions, to take the following actions in the administration of the Account:

(a) Hold property in nominee name, in bearer form or in book entry form, in a clearinghouse corporation or in a depository, so long as the Custodian's records clearly indicate that the assets held are a part of the Account;

(b) Take all action necessary to pay for, and settle, transactions, including exercising the power to borrow or raise monies from the Custodian in its corporate capacity or an affiliate and hold any property in the Account as security to the extent of advances made to the Account;

(c) Make, execute and deliver any and all documents, agreements or other instruments in writing as are necessary or desirable for the accomplishment of any of the powers in this Agreement; and

(d) Generally take all action, whether or not expressly authorized, which the Custodian may deem necessary or desirable for the fulfillment of its duties hereunder.

The Custodian may also be directed pursuant to Authorized Instructions to exercise the powers described in this Section.

**8. Duties of the Custodian.** The Custodian shall perform or cause its agents or subcustodians to perform the following duties with respect to the Account:

(a) Hold the property in safekeeping facilities of the Custodian or of other custodian banks or clearing corporations, in the United States or elsewhere in accordance with applicable law;

(b) Collect income payable to and distributions due to the Account and sign on the Account's behalf all declarations, affidavits, and certificates of ownership required to collect income and principal payments; provided that the Custodian shall not be responsible for the failure to receive payment of (or late payment of) distributions with respect to securities or other property held in the Account;

(c) Subject to the timely receipt of notice from an issuer or the Pledgor's Authorized Party, collect all proceeds from securities, certificates of deposit or other investments held in the Account which may mature or be called;

(d) If a Notice of Exclusive Control has not been sent by the Secured Party, forward to the Pledgor's Authorized Party proxies or ballots for any stocks, bonds or other securities held in the Account in a form to enable the Pledgor's Authorized Party to effect the voting of proxies, excluding bankruptcy matters to which the Custodian's duties are set forth in Section (f) below;

(e) If a Notice of Exclusive Control has not been sent by the Secured Party, submit or cause to be submitted to the Pledgor's Authorized Party information received by the Custodian, or summaries of information, regarding ownership rights pertaining to property held in the Account, in accordance with the Custodian's practices, excluding bankruptcy matters to which the Custodian's duties are set forth in Section (f) below;

(f) If a Notice of Exclusive Control has not been sent by the Secured Party, forward to the Pledgor's Authorized Party an initial notice of bankruptcy cases relating to securities held in the Account and a notice of any required action related to such bankruptcy cases as may be received by the Custodian. No further action or notification related to the bankruptcy case shall be required absent the specific agreement of the parties hereto; and

(g) Attend to corporate actions with respect to which no discretionary decision is required.

**9. Pricing and Data.** For purposes of this Section "Market Data" shall mean pricing or other data related to securities and other assets. Market Data includes but is not limited to security identifiers, valuations, bond ratings, classification data, and other data received from investment managers and others. In providing Market Data related to the Account in connection with this Agreement, the Custodian is authorized to use pricing vendors, brokers, dealers, investment managers, subcustodians, depositories and

any other person providing Market Data to the Custodian (“Data Providers”). The Custodian shall be entitled to rely without inquiry on all Market Data provided to it, and the Custodian shall not be liable for any losses incurred as a result of errors or omissions with respect to any Market Data utilized by the Custodian. The Secured Party and the Pledgor acknowledge that certain pricing or valuation information may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may be material. Market Data may be the intellectual property of the Data Providers, which may impose additional terms and conditions upon the Secured Party’s and the Pledgor’s use of the Market Data.

**10. Income and Settlement; Market Practice Settlements.**

(a) In accordance with the Custodian’s standard operating procedures, the Custodian shall credit the Account, net of any taxes, with income and maturity proceeds on securities on contractual payment date or actual receipt. To the extent the Custodian credits income on contractual payment date, the Custodian may reverse such accounting entries to the contractual payment date if the Custodian reasonably believes that such amount will not be received.

(b) In accordance with the Custodian’s standard operating procedures, the Custodian will attend to the settlement of securities transactions on the basis of either contractual settlement date accounting or actual settlement date accounting. To the extent the Custodian settles certain securities transactions on the basis of contractual settlement date accounting, the Custodian may reverse to the contractual settlement date any entry relating to such contractual settlement if the Custodian reasonably believes that such amount will not be received.

(c) Settlements of transactions may be effected in trading and processing practices customary in the jurisdiction or market where the transaction occurs. The parties acknowledge that this may, in certain circumstances, require the delivery of cash or securities (or other property) without the concurrent receipt of securities (or other property) or cash. In such circumstances, the Custodian shall have no responsibility for nonreceipt of payment (or late payment) or nondelivery of securities or other property (or late delivery) by the counterparty.

**11. Statements.** In addition to the reporting requirements of Sections 8 and 9, the Custodian shall make available to the Secured Party and the Pledgor a monthly report of all transfers to or from the Account and a statement of all holdings in the Account as of the last business day of each month. With execution of a separate agreement the Secured Party and/or the Pledgor may elect to receive certain information electronically through the Internet to an email address specified by it for such purpose. Use of the Internet for this purpose is an acknowledgement that such transmissions are not encrypted and

therefore are insecure. The Secured Party and the Pledgor, as applicable, further acknowledge that there are other risks inherent in communicating through the Internet such as the possibility of virus contamination and disruptions in service, and agree that the Custodian shall not be responsible for any loss, damage or expense suffered or incurred by either of them or by any person claiming by or through them as a result of the use of such methods. If, within ninety (90) days after the Custodian makes available a statement to the Pledgor or the Secured Party, as applicable, such party has not given the Custodian notice of any exception or objection thereto, the statement shall be deemed to have been approved as to such non-objecting party, and in such case, the Custodian shall not be liable to such non-objecting party for any matters set forth in such statement.

**12. Notices of Adverse Claims.** Upon actual receipt of written notice of any lien, encumbrance or adverse claim by a third party against the Account or any asset of the Account, the Custodian shall notify the Secured Party and the Pledgor thereof.

**13. Limited Liability of the Custodian.** The Custodian's liability shall be limited as follows:

(a) The Custodian shall not be liable for the title, validity or genuineness of any property or evidence of title thereto received by it or delivered by it pursuant to this Agreement;

(b) The Custodian shall not be liable for any act or omission of any other person except for Custodian's agents and employees selected and retained in its sole discretion;

(c) The Custodian shall not be liable for any indirect, consequential or special damages with respect to its role as the Custodian;

(d) As permitted by Section 5, the Custodian shall not be liable for settling trades for assets held in the Account pursuant to Authorized Instructions, or complying with Authorized Instructions concerning the Account, that are received by the Custodian before the Custodian receives a Notice of Exclusive Control from the Secured Party, which shall be considered an entitlement order as defined in UCC Section 8-102(a)(8), even if circumstances exist that would permit the Secured Party to give a Notice of Exclusive Control;

(e) The Custodian shall not be liable for complying with a Notice of Exclusive Control or, after receipt of such Notice of Exclusive Control, complying with other Authorized Instructions concerning the Account originated by the Secured Party or the Secured Party's Authorized Party even if circumstances do not exist permitting the Secured Party to give a Notice of Exclusive Control;

(f) The Custodian shall not be liable for investigating or making any determination as to whether a default exists under any agreement between the Pledgor and the Secured Party;

(g) The Custodian shall not be liable for any losses resulting from the deposit or maintenance of securities or other property (in accordance with market practice, custom or regulation) with any recognized foreign or domestic clearing facility, book-entry system, centralized custodial depository, or similar organization (including, without limitation, international depositories such as Euroclear and Clearstream); and

(h) The Custodian shall not be liable for any losses or damages suffered as a result of the Pledgor's default.

Except as specifically set forth above, the Custodian shall not be responsible or liable for any losses or damages arising as a result of its action or inaction except to the extent that such losses or damages are directly caused by its negligence, gross negligence or willful misconduct. The Custodian makes no representation or warranty, and shall have no responsibility or liability, with respect to the effectiveness of this Agreement in perfecting the Secured Party's security interest. In its capacity as custodian for the property in the Account, the Custodian has not reviewed the Pledge Agreement nor any margin account agreement and shall have no responsibility or liability in respect thereof. The Custodian shall have no duty, obligation or liability to ensure the Pledgor's or the Secured Party's compliance with any regulation or statute.

The duties of the Custodian shall be only those specifically undertaken pursuant to this Agreement.

This provision shall survive the termination of the Agreement.

**14. Standard of Care.** In performing its duties under this Agreement the Custodian shall exercise the same care and diligence that a professional custodian engaged in the banking or trust company industry and having professional expertise in securities processing transactions and custody would observe in such affairs.

**15. Indemnification of the Custodian.** The Pledgor hereby agrees to indemnify, defend and hold harmless the Custodian, its directors, officers, agents and employees (collectively, "Indemnified Parties") against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorney's fees, arising out of or in connection with this Agreement except to the extent occurring as a result of the Custodian's negligence, gross negligence or willful misconduct and except as otherwise specifically provided in this Section.

To the extent permitted by applicable law, the Secured Party hereby agrees to indemnify, defend and hold harmless the Indemnified Parties against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorney's fees arising out of or in connection with the Custodian's acting in accordance with Authorized Instructions of the Secured Party and in failing to act in the absence thereof, except to the extent occurring as a result of the Custodian's negligence, gross negligence or willful misconduct.

This provision shall survive the termination of the Agreement.

**16. Compensation and Expenses.** The Custodian shall be entitled to compensation for services under this Agreement as agreed between the Pledgor and the Custodian. The Pledgor acknowledges that, as part of the Custodian's compensation, the Custodian will earn interest on balances, including disbursement balances and balances arising from purchase and sale transactions as disclosed in the Custodian's float policy. The Custodian shall also be entitled to reimbursement for reasonable expenses incurred by it in the discharge of its duties under this Agreement (the "Expenses"). The Custodian is authorized to charge and collect from the Account any and all fees and Expenses earned unless such fees and Expenses are paid directly by the Pledgor. Fees and Expenses shall be as set forth in the Fee Schedule dated April, 2011 (the "Fee Schedule"). To the extent the Custodian advances funds to the Account for disbursements pursuant to Authorized Instructions or to settle or pay for transactions, the Custodian shall be entitled to collect from the Account such amounts and reasonable charges established under the Custodian's standard overdraft terms, conditions and procedures. In the event that cash held in the Account is insufficient to reimburse the Custodian for the amount of any such fees, Expenses or advances, the Custodian shall be entitled to dispose of assets of the Account to the extent necessary to obtain reimbursement. This provision shall survive the termination of the Agreement.

**17. Successors and Assigns.** No party may assign this Agreement without the prior written consent of the others, except that the Custodian may assign this Agreement to any entity which directly or indirectly is controlled by, or is under common control with, the Custodian. Any entity which shall by merger, consolidation, purchase, or otherwise succeed to substantially all the custody business of the Custodian shall, upon such succession and without any appointment or other action by the Pledgor or the Secured Party, be and become successor custodian hereunder upon notification to the other parties. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

**18. Entire Agreement.** This Agreement and the Fee Schedule constitute the entire agreement with respect to the control and safekeeping matters dealt with herein and supersede all previous agreements, whether oral or written, and documents with respect to such matters.



**19. Amendment and Termination.** This Agreement may be amended by written agreement of the parties and may be terminated by any party upon thirty (30) days' prior notice in writing to the other parties. Such notice shall not affect or terminate the Secured Party's security interest in the assets of the Account. Upon termination, the assets of the Account shall be distributed pursuant to the Authorized Instructions of the Secured Party's Authorized Party either to a new account with the Custodian, directly to the Secured Party, to a third party designated by the Secured Party or as otherwise directed by the Secured Party.

**20. Severability.** If any term or provision set forth in this Agreement shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall be construed in all respects as if such invalid or unenforceable term or provision were omitted.

**21. Force Majeure.** Notwithstanding anything in this Agreement to the contrary, the Custodian shall not be responsible or liable for its failure to perform under this Agreement or for any losses to the Account resulting from any event beyond the reasonable control of the Custodian, its agents or subcustodians. This provision shall survive the termination of this Agreement.

**22. Notices.** Any notice, request, statement or other communication required or permitted to be given under this Agreement shall be in writing and addressed to the party at the address set forth below. Any party may change its address for notices by giving written notice to the other parties.

To the Pledgor:

To the Secured Party: INDIANA BOARD FOR DEPOSITORIES  
One North Capitol, Suite 444  
Indianapolis, IN 46204  
Attn: Patrick Hastings

To the Custodian: THE BANK OF NEW YORK MELLON  
135 Santilli Highway  
Everett, MA 02149  
Attn: Deanna Keating

**23. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

Facsimile, .pdf and/or electronically transmitted executed copies of this Agreement shall be considered originals for all purposes.

**24. Governing Law and Legal Proceedings.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana without regard to its conflict of laws provisions. The parties hereby expressly waive, to the full extent permitted by applicable law, any right to trial by jury with respect to any judicial proceeding arising from or related to this Agreement.

**25. Representations.** Each party hereby represents and warrants to the other parties that the individual executing this Agreement on its behalf has the requisite power and authority to do so and to bind such party to the terms of this Agreement. The Pledgor and the Secured Party have received and read the “Customer Identification Program Notice”, a copy of which is attached to this Agreement as Exhibit A.

**IN WITNESS HEREOF** the parties hereto have executed this Agreement effective as of the date first set forth above.

**INDIANA BOARD FOR  
DEPOSITORIES  
Secured Party**

**[PLEDGOR]**

By:\_\_\_\_\_

By:\_\_\_\_\_

Title:\_\_\_\_\_

Title:\_\_\_\_\_

**THE BANK OF NEW YORK MELLON  
Custodian**

By:\_\_\_\_\_

Title:\_\_\_\_\_

## **EXHIBIT A**

### **CUSTOMER IDENTIFICATION PROGRAM NOTICE**

#### **IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT**

To help the government fight the funding of terrorism and money laundering activities, all financial institutions are required by law to obtain, verify and record information that identifies each individual or entity that opens an account.

What this means for you: When you open an account, we will ask you for your name, address, taxpayer or other government identification number and other information, such as date of birth for individuals, that will allow us to identify you. We may also ask to see identification documents such as a driver's license, passport or documents showing existence of the entity.